IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1500 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI M VALAND

Versus

ZENABHAI AITABHAI SOLANKI

Appearance:

Mr.Bhavir G Patel for MR AJ PATEL for Petitioner

MR BJ JADEJA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/07/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a writ of certiorari for quashing the judgment and order dated 13.2.82 of the Deputy Collector, Kheda in Tenancy Appeal No. 2254 of 1979 allowing the appeal filed by the respondent and the judgment and order dated 22.11.1984 of the Gujarat Revenue Tribunal

dismissing the Revision Application No. Ten/B/A/1994/82 filed by the present petitioner.

2. The name of Valand Dahiben daughter of Valand Motibhai Chhababhai was shown as occupant of the land bearing survey no. 1269 admeasuring 0-17 gunthas of village Vansol Ta: Anand in village form no. 7-12, while in other column of the said land, name of Aitabhai Amrabhai was shown as protected tenant. The proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 were initiated in which the respondent made a statement on 27.4.76 that the name of Valand Dahiben, daughter of Motibhai Chhababhai is shown in village form no.7/12 as an occupant of the land described as survey no. 1269, admeasuring A. 0-17 Gunthas . He stated that his father Aitabhai Amrabhai was shown in other right column in respect of that land. He expired about five years ago. Since that land was owned by a Valand, it was a land used by him who was a Chakariat. Motibhai Chhababhai was the owner of this land who died about 25 years ago. After his death, the land was mutated in the name of Dahiben, who happened to be his daughter. This land was mortgaged in favour of Aitabhai Amrabhai who was his father. The land was mortgaged. He was the only heir of Aitabhai. Dahiben's father, Motibhai had mortgaged this land for Rs.200/- in the year 1946-47 to his father. His father was cultivating this land as a mortgagee. After the death of his father he has been cultivating that land in the same capacity. He further deposed that about three years prior to his deposition, he received consideration of the said mortgaged land from Mohanbhai Maganbhai who happened to be son of Dahiben who was daughter of Motibhai Chhababhai in the year 1972 and therefore, he handed over possession of the said land to its owner. He stated that he was not the tenant of the disputed land. The owner of the land was Mohanbhai. He is the son of Dahiben. Dahiben has also died three-four years prior to the date of the deposition. In this way, according to his deposition, the land was mortgaged for Rs.200/- in 1946-47 to Aitabhai Amrabhai and that Mohanbhai has repaid the said amount of Rs.200/- in 1972. The petitioner has taken back the possession. On the basis of the statement of the respondent, the Mamlatdar and ALT No.4, Anand held that Aitabhai was not the tenant of the land bearing survey no.1269 admeasuring A 0-17 gunthas. He was cultivating the land as a mortgagee and not as a tenant. His name was directed to be deleted from other rights column as a tenant. The proceedings under section 32-G of the Act were therefore, dropped by the order dated 27.4.76.

3. Being aggrieved by the said order, the present respondent filed Tenancy appeal before the Deputy Collector, Kheda being Tenancy Appeal No. 2254/79. Though the said appeal was beyond limitation of one year and 10 months, without condoning delay and without finding sufficient cause to condone delay, the Deputy Collector allowed appeal of the respondent by his order dated 13th February, 1982 and set aside the order of the Mamlatdar and ALT, Anand. Therefore, the petitioner filed Revision Application no. TEN.BA.1994/82 before The Gujarat Revenue Tribunal. The Tribunal, by its order dated 22nd November,1984 dismissed the Revision application of the present petitioner and confirmed the order dated 13.2.82 passed by the Deputy Collector, Kheda.

4. Therefore, the petitioner has filed the present petition against the said order dated 22.11.1984 passed by the Gujarat Revenue Tribunal confirming the order of the Deputy Collector, Kheda.

5. The learned counsel for the respondent raised a preliminary objection that this Court has only supervisory power under Article 227 of the Constitution and those supervisory powers cannot be exercised as Court of appeal or as revisional Court to correct an error of law and even erroneous finding. Two authorities below have recorded concurrent finding that the respondent was recorded as a protected tenant and therefore, this Court should not exercise its extraordinary jurisdiction under Article 227 of the Constitution of India.

6. The learned counsel for the petitioner submitted that this is a case where both the courts have not at all considered the issue of limitation and have exercised their jurisdiction in ignoring to consider the same. It is a question of law which could be raised at any time and at any stage. Secondly, the Deputy Collector, Kheda as well as Gujarat Revenue Tribunal have committed a grave error in exercising their jurisdiction to arrive at a conclusion on the basis of admitted false entries inthe revenue papers. The contention of the authorities below are based on wrong and misinterpretation of statutory provisions of law and the presumptions are against principles of natural justice and have misinterpreted statutory provisions of law.

7. I have considered the arguments advanced by the learned advocates for the parties in respect of the exercise of jurisdiction by thisCourt under Article

227 of the Constitution of India.

8. From the perusal of the record, it appears that the Deputy Collector and the Gujarat Revenue Tribunal both have ignored to consider the best evidence of admissionand rejected it as irrelevant and failed to consider the law relating to Limitation Act. I do not find any substance in the preliminary objection taken on behalf of the respondent. I have gone through all the three judgments. Mamlatdar and ALT, Anand on the basis of admission in the deposition made by the respondent in its open Court has held that the respondent was not a tenant of the land as the respondent was in possession and occupation of the land only as a mortgage. Of course,that was an oral mortgage and the mortgagee has been re-deemed after payment of mortgage amount and the possession was handed over to the petitioner and as such the validity of the oral mortgage cannot be challenged. The appeal was found time barred by one year and 10 months, but the lower appellate authority has not recorded any finding condoning the delay and entertained the appeal. However, the appellate authority, i.e. Deputy Collector has mentioned in para-4 of its order that "the appellant has stated in the memorandum of appeal that no intimation was received about the judgment of the Mamlatdar ". It is further observed "It is not correct because entry no. 6763 was effected about this judgment on 28.6.76 and an endorsement is made in the said entry that parties were served with notices. Therefore, the appellant must have been informed about the order at the time of effecting mutation entry". The Deputy Collector has not found any reason for condoning the delay in filing the appeal, he has gone to the extent of considering the representation of the learned counsel for the appellant and held that the appellant was in possession of the suit land and that possession of the appellant was legal on 5.6.55 and 1.4.57 or 13.12.60 and that finding was sufficient for recording the name of the respondent and continuation right is by mode no. 3 showing the name of the respondent as a tenant, as there was no entry regarding mortgage right in the extract of village form no. 7/12, allowed the appeal and set aside the order of the Mamlatdar. Before the Tribunal, the petitioner again referred the deposition of the respondent, but the Tribunal found that the alleged mortgage was not proved. The possession of the respondent was lawful as he was inducted by the land owner. After the death of the owner. the respondent continued to be in legal possession. As on 1.4.57, the deceased Aitabhai was alive and therefore, he had become a deemed purchaser of the land under section 32G of the

Act. As such, the question of so called redemption in the year 1972 does not arise. Therefore, he was entitled to purchase the land and his name appeared in the second right column of Revenue record as a protected tenant.

9. At the outset, the learned counsel for the petitioner submitted that the respondent himself admitted in his statement made before the Mamlatdar in the proceedings under section 32G of the Tenancy Act, that his father and after death of his father he was holding the land as a mortgagee and not as a tenant. Entries in revenue papers were false and contrary to admissions. He continued in the same capacity as a mortgagee and not as a tenant. This admission is a substantial piece of evidence and for this purpose, he relied on the judgment in the case of Bharatsing and others vs. Mst. Bhagirathi reported in AIR 1966 SC, 405 wherein it has been held that admissions must be clear if they are to be used against the persons making them. They are substantive evidence in view of sections 17 and 21 of the Evidence Act, though they are not conclusive proof of the matters admitted. In the present case, therespondent has inclear terms stated that his father was holding the possession of the land in dispute as a mortgagee. After his death, the respondent continued in the same capacity. He was not the owner or tenant of that land and his occupation was permissible as mortgagee and not as a tenant. This statement has not been proved as a false nor it was proved that it was given under compulsion, coercion, promise or misrepresentation of facts. Unless the admission made by the respondent is proved that such admission was made under misunderstanding of facts or was obtained by undue pressure, coercion, threat or promise, that admission cannot be ignored in law and that will be treated as substantial evidence. None of the courts below has recorded any finding to the efffect nor the respondent has led any evidence to the effect that the admission made before the Mamlatdar was false and was not a genuine admission. The courts below have acted contrary to specific provisions of law and the conclusions reached by them involve non-exercise of their jurisdiction.

10. The learned advocate for the respondent submitted that admission made by the respondent is not a conclusive evidence to hold that the respondent was not a tenant. Of course, it is relevant for this purpose. In support of his argument, he relied upon the judgment of the Division Bench in the case of M/s. Hasmukh D Desai and Co. vs. Bhimbhai Ranchhodjhi Vashi reported in 1985 (2)GLR, 644. The Division Bench of this Court has held

therein that admission is relevant and binding upon the person who made the statement and he will not be permitted to go back upon that statement, of course, such a statement would not be conclusive evidence and it will be open to the party to prove that admission made earlier in the earlier proceeding was in fact not true, but the onus will be on that party and in the present case, the and respondent has not led any evidence to rebut the evidence of admission.

11. I have considered the submissions made on behalf of the parties. Neither the respondent has led any evidence that the admission or the statement made before the Mamlatdar was false or untrue due to any reason nor any of the two courts below have recorded any finding that the statement made by the respondent was not true. In these circumstances, in the absence of any evidence or proof of the respondent to that effect, the admissions made by the respondent in his deposition in the Court are not only relevant,but they are substantive evidence. The authority relied on by the learned counsel for the respondent helps the petitioner. Both the courts below have failed to exercise their jurisdiction in appreciating the substantive piece of evidence.

12. The lower appellate authority has found that the appeal was barred bylimitation and it was beyond one year and 10 months. Unless delay in filing the appeal is condoned, the appeal was not entertainable at all. The learned counsel for the respondent could not submit on this aspect that the appeal was entertainable without condoning delay. In my opinion, the appeal was not sustainable in law unless delay was condoned. The Deputy Collector has not condoned the delay. On the other hand, the lower appellate court found appeal barred by limitation and, therefore, in the absence of satisfaction of the appellate authority for condoning delay in filing the appeal, the appeal was not sustainable. When the appeal was not sustainable in the eye of law, the order passed by the Deputy Collector and that of the Tribunal are liable to be set aside on this ground alone.

13. So far as the possession of the respondent is concerned that was a permissible possession on the basis of mortgage as admitted by the respondent in his deposition. On the basis of permissible possession, right of tenancy basing to be entries in revenue papers does not accrue or originate. Both the authorities below have not at all considered this aspect and they have committed a grave dereliction of duty entrusted upon them

by the statute.

14. In view of the above discussion, this petition is allowed. The judgment and order dated 13.12.82 passed by the Deputy Collector in Tenancy Appeal No. 2254 of 1979 and the judgment and order dated 22.11.1984 passed by the Gujarat Revenue Tribunal are quashed and set aside and the order dated 27.4.76 passed by the Mamlatdar and ALT no. 4, Anand in Tenancy case no. 43212/Saiyedpura is maiantained. Rule is made absolute with no order as to costs.

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